

106TH CONGRESS
2D SESSION

H. R. 4297

To amend the Mineral Leasing Act of 1920 to ensure the orderly development of coal, coalbed methane, natural gas, and oil in common areas of the Powder River Basin, Wyoming and Montana, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2000

Mrs. CUBIN introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Mineral Leasing Act of 1920 to ensure the orderly development of coal, coalbed methane, natural gas, and oil in common areas of the Powder River Basin, Wyoming and Montana, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Powder River Basin
5 Resource Development Act of 2000”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) The Powder River Basin in Wyoming and
2 Montana is one of the world's richest energy re-
3 source regions, possessing the largest reserves of
4 coal in the United States and significant deposits of
5 oil and natural gas, including coalbed methane.

6 (2) The coal is predominantly federally
7 owned—either as part of the public lands or re-
8 served from public lands that were sold under home-
9 stead laws enacted in 1909, 1910, and 1916—and
10 is leased to coal producers by the Bureau of Land
11 Management, under the Mineral Leasing Act.

12 (3) The gas and oil are owned by the Federal
13 Government, the States, and private parties.

14 (4) The federally owned gas and oil, like the
15 coal, are part of the public lands and leased to oil
16 and gas lessees by the Bureau of Land Management
17 under the Mineral Leasing Act.

18 (5) The privately owned gas and oil were con-
19 veyed with the public lands purchased under the 3
20 homestead laws and may have been sold or leased to
21 oil and gas producers by the successors to those
22 original purchasers.

23 (6) Development of these valuable energy re-
24 sources is of critical importance to the American
25 public.

1 (7) These energy resources provide fuel to heat
2 and light our homes and power our industries.

3 (8) Extraction of these energy resources pro-
4 vides royalties, taxes, and wages that contribute to
5 national, State, and local treasuries and economies.

6 (9) Development of both the coal and the gas
7 and oil is occurring in the Powder River Basin.

8 (10) In many locations both the coal and the
9 gas and oil have been leased or sold to different par-
10 ties. These resources are frequently extracted se-
11 quentially, but for safety and operational reasons
12 typically cannot be extracted simultaneously, in the
13 same location. Where concurrent development is im-
14 possible and even where it may be possible, disputes
15 have arisen among the different parties concerning
16 plans for, and the course of, development of these
17 resources.

18 (11) The development of any one of these re-
19 sources can result in loss of another, either by mak-
20 ing recovery impossible in the case of coalbed meth-
21 ane or uneconomic in the case of deep natural gas,
22 oil, or coal.

23 (12) The nature, extent, and value of any loss
24 or delay in development of the gas, oil, or coal re-
25 source due to development of another of these re-

1 sources in the common areas within the Powder
2 River Basin in which disputes between the resources'
3 developers arise should be ascertained and fair mar-
4 ket value for the loss or delay provided either by
5 agreement between the developers or by an expedi-
6 tious adjudication procedure.

7 (13) The Federal law under which most of the
8 coal and much of the gas and oil in the Powder
9 River Basin are made available for development
10 should be amended to provide a procedure that will
11 assure the orderly development of the energy re-
12 sources, and fair treatment to the resources' devel-
13 opers, in the common areas within the Powder River
14 Basin in which disputes between the developers
15 arise.

16 (b) PURPOSES.—The purposes of this Act are to—

17 (1) amend the Mineral Leasing Act to provide
18 a procedure to resolve disputes between developers of
19 coal and developers of natural gas and oil in the
20 common areas within the Powder River Basin to
21 which this Act applies regarding the sequence of de-
22 velopment of those resources in the same location;

23 (2) encourage maximum recovery of the re-
24 sources prior to the time at which such disputes are

1 likely to occur or thereafter until the procedure pro-
2 vided by this Act is implemented;

3 (3) ensure that the procedure provided by this
4 Act is employed only as a last resort if the disputes
5 are not fully resolved by voluntary agreements be-
6 tween the resources' developers or administrative
7 policies and actions;

8 (4) determine fair and just compensation owed
9 for the postponement, or loss, of the opportunity to
10 develop a resource resulting from implementation of
11 the procedure provided by this Act; and

12 (5) provide expressly that the procedure pro-
13 vided by this Act will neither apply to nor set any
14 precedent for resolution of disputes between or
15 among resource developers outside of the common
16 areas within the Powder River Basin to which this
17 Act applies.

18 **SEC. 3. AMENDMENT TO THE MINERAL LEASING ACT.**

19 The Mineral Leasing Act (30 U.S.C. 181 et seq.) is
20 amended by redesignating section 44 as section 45 and
21 inserting after section 43 the following new section:

22 **“SEC. 44. DEVELOPMENT OF COAL, NATURAL GAS, AND OIL**
23 **IN THE POWDER RIVER BASIN.**

24 **“(a) DEFINITIONS.—**As used in this section:

1 “(1) The term ‘Powder River Basin’ or ‘Basin’
2 means the area designated as ‘Powder River Basin’
3 on a map entitled ‘MLA Section 44 Powder River
4 Basin Area’, dated July 1, 1999, and on file in the
5 Wyoming and Montana State Offices of the Bureau
6 of Land Management.

7 “(2) The term ‘Subsection (h) Lands’ means
8 the area designated as ‘Subsection (h) Lands’ on the
9 map described in paragraph (1).

10 “(3) The term ‘Federal coal lease’ means a
11 lease of Federal coal in the Basin issued pursuant
12 to this Act.

13 “(4) The term ‘Federal coal lessee’ means the
14 holder of a Federal coal lease.

15 “(5) The term ‘oil and gas developer’ means the
16 holder of a lease under this Act for oil or gas in the
17 Basin or a lease for or right to develop oil and gas
18 in the Basin provided by any State or private owner.

19 “(6) The term ‘oil and gas property’ means an
20 area of the Basin which is subject to the lease for
21 or right to develop oil and gas held by an oil or gas
22 developer as described in paragraph (5).

23 “(7) The term ‘common area’ means an area in
24 the Basin in which all or a portion of a Federal coal
25 lease and any area of State or private coal within a

1 logical mining unit with the Federal coal lease over-
2 laps all or a portion of an oil and gas property.

3 “(8) The term ‘approved or proposed mining
4 plan’ means a mining plan that is approved by, or
5 has been submitted for the approval of, the Bureau
6 of Land Management.

7 “(9) The term ‘coalbed methane’ shall have the
8 meaning given that term in section 1339(p)(2) of
9 the Energy Policy Act of 1992 (106 Stat. 2992; 42
10 U.S.C. 13368(p)(2)).

11 “(10) The term ‘owner of any interest in the oil
12 and gas property’ means the owner of any interest
13 in the oil and gas property, including working inter-
14 est, lease interest, operating interest, mineral inter-
15 est, and royalty interest, and any other person who
16 might receive compensation for unavoidable fixed ex-
17 penses under an order concerning the oil and gas
18 property issued pursuant to paragraph (10)(E) of
19 subsection (f).

20 “(11) The term ‘owners of any non-Federal in-
21 terest in the oil and gas property’ means all owners
22 of any interest in the oil and gas property except the
23 Federal Government or any agency or department
24 thereof.

1 “(12) The term ‘develop’ or ‘development’
2 means to develop or to produce, or both, or the de-
3 velopment or production, or both, respectively, in-
4 cluding all incidental operations.

5 “(b) PARTIES ENCOURAGED TO ENTER INTO WRIT-
6 TEN AGREEMENT.—In any common area, the Federal coal
7 lessee and oil and gas developer, subject to applicable Fed-
8 eral and State law, may and are encouraged to enter into
9 a written agreement that details operations and assigns
10 or assesses costs or compensation for the concurrent or
11 sequential development of those resources.

12 “(c) MINERAL CONSERVATION.—The Secretary shall
13 employ such authority as the Secretary may possess under
14 this Act to encourage expedited development of oil and gas
15 and coal that—

16 “(1) are leased pursuant to this Act;

17 “(2) are within common areas; and

18 “(3) otherwise may be lost or bypassed under
19 agreements entered into, or orders issued, pursuant
20 to this section.

21 “(d) EXPLORATION.—Unless otherwise provided by
22 law, in any common area where no coal, gas, or oil devel-
23 opment operations have commenced, the Federal coal les-
24 see and the oil and gas developer shall each—

1 “(1) have access to conduct exploration activi-
2 ties; and

3 “(2) conduct such activities in a manner that
4 will avoid undue interference with the other’s activi-
5 ties.

6 “(e) NEGOTIATIONS CONCERNING DEVELOPMENT
7 PRIORITY FOR CERTAIN OPERATIONS IN THE BASIN.—

8 “(1) OBLIGATION TO PROVIDE WRITTEN NO-
9 TICE OF CONFLICT.—Whenever a Federal coal lessee
10 or an oil and gas developer determines that a com-
11 mon area exists which contains a Federal coal lease,
12 or a logical mining unit, including the Federal coal
13 lease, held by the Federal coal lessee and an oil and
14 gas property held by the oil and gas developer and,
15 pursuant to an approved or proposed mining plan,
16 mining operations or facilities in support of mining
17 for coal on the leasehold or the logical mining unit
18 will be located within the common area, the Federal
19 coal lessee or the oil and gas developer shall provide
20 written notice of the determination to the other
21 party no later than 210 days prior to the date on
22 which the mining operations or construction of the
23 mine support facilities is projected by the approved
24 or proposed mining plan to commence in the com-
25 mon area.

1 “(2) OBLIGATION TO NEGOTIATE.—Promptly
2 after providing the notice referred to in paragraph
3 (1), the party which provided the notice shall seek
4 to negotiate a written agreement with the other
5 party that resolves any conflict between the develop-
6 ment of gas or oil and development of coal in the
7 common area.

8 “(f) COMPENSATION PROCEDURES FOR ASSIGNMENT
9 OF DEVELOPMENT PRIORITY.—

10 “(1) PETITION FOR RELIEF.—(A) If the Fed-
11 eral coal lessee and the oil and gas developer engage
12 in negotiations, but do not reach agreement, pursu-
13 ant to subsection (e)(2), the Federal coal lessee or
14 the oil and gas developer may file a petition for re-
15 lief as described in subparagraph (C) in the United
16 States district court for the district in which the
17 common area is located on any date which is not less
18 than 150 days prior to the date on which the mining
19 operations or construction of the mine support facili-
20 ties is projected by the approved or proposed mining
21 plan to commence in the common area.

22 “(B) The petitioner shall serve the oil and gas
23 developer or the Federal coal lessee, as the case may
24 be, with a copy of the petition for relief.

1 “(C) The petition for relief shall include the fol-
2 lowing:

3 “(i) A description and map of the Federal
4 coal lease, the oil and gas property, and the
5 common area.

6 “(ii) A list containing the names and ad-
7 dresses of all owners of any non-Federal inter-
8 est in the oil and gas property and all owners
9 of any non-Federal interest in the Federal coal
10 lease or logical mining unit. The petitioner shall
11 list those owners of any non-Federal interest in
12 the oil and gas property and of the Federal coal
13 lease or logical mining unit whom the petitioner
14 is able to ascertain from the properly indexed
15 records of the county recorder of the county or
16 counties in which the oil and gas property and
17 Federal coal lease or logical mining unit are lo-
18 cated, and the respondent shall file with the
19 court and serve on the petitioner any correc-
20 tions of, additions to, or deletions from the list
21 known to the respondent within 10 days of
22 service of the petition for relief pursuant to
23 subparagraph (A). Thereafter, whenever any
24 correction of, addition to, or deletion from the
25 list becomes known to either the petitioner or

1 the respondent, that party shall promptly file
2 with the court and serve on the other party the
3 addition, correction, or deletion. Any person
4 who believes he or she is an owner of any non-
5 Federal interest in the oil and gas property or
6 in the Federal coal lease or logical mining unit
7 and is omitted from the list may file a motion
8 in the court to be added to the list at any time
9 prior to the issuance of an order pursuant to
10 paragraph (10)(E) or paragraph (11)(C).

11 “(iii) A certified copy of the notice de-
12 scribed in subsection (e)(1).

13 “(iv) A sworn statement by a senior officer
14 of the petitioner with authority to commit the
15 petitioner in any negotiation under subsection
16 (e)(2) stating, and all documents dem-
17 onstrating, that the petitioner negotiated or at-
18 tempted to negotiate in good faith with the re-
19 spondent, pursuant to subsection (c)(2), a vol-
20 untary agreement for development of the coal
21 and gas or oil resources or an agreement to
22 compensate the oil and gas developer and all
23 other owners of any non-Federal interest in the
24 oil and gas property for any loss of, or delay in
25 development of, the oil or gas resource, or the

1 Federal coal lessee and all other owners of any
2 non-Federal interest in the Federal coal lease
3 or logical mining unit for any loss of, or delay
4 in development of, the coal resource, resulting
5 from the conflict between development of gas or
6 oil and development of coal in the common
7 area.

8 “(D) The Federal coal lessee shall submit a
9 copy of the approved or proposed mining plan for
10 the mining operations or support facilities that are
11 the subject of the petition for relief—

12 “(i) with the petition for relief if the Fed-
13 eral coal lessee is the petitioner; or

14 “(ii) within 5 days of the date of service of
15 the petition for relief if the Federal coal lessee
16 is the respondent.

17 “(2) JOINDER OF PARTIES.—The Secretary of
18 the Interior and all owners of any non-Federal inter-
19 est in the oil and gas property and in the Federal
20 coal lease or logical mining unit identified pursuant
21 to paragraph (1)(C)(ii) shall be joined in the pro-
22 ceedings established pursuant to this subsection.

23 “(3) PARTIES’ RESPONSE TO PETITION.—The
24 non-Federal respondent or respondents shall have 30
25 days from the date of service of the petition for re-

1 lief in which to respond to the petition. The Sec-
2 retary of the Interior shall have 60 days from the
3 date of service of the petition for relief in which to
4 respond to the petition.

5 “(4) COURT’S INITIAL RESPONSE TO PETITION:
6 PUBLIC INTEREST DETERMINATION AND ORDER
7 CONCERNING SEQUENCE OF DEVELOPMENT.—With-
8 in 120 days of the filing of the petition for relief
9 pursuant to paragraph (1)(A), the court shall take
10 the following actions:

11 “(A) The court shall determine, with peti-
12 tioner having the burden of proof—

13 “(i) whether a common area exists;
14 and

15 “(ii) whether the approved or pro-
16 posed mining plan provides for the mining
17 operations to intersect, or the mine sup-
18 port facilities to be constructed in, any
19 portion of the common area.

20 “(B)(i) If existence of the common area
21 and intersection of, or construction in, the com-
22 mon area are determined pursuant to subpara-
23 graph (A), the court shall determine whether
24 the public interest is best realized either by sus-
25 pension of all or any part of, including any geo-

1 graphical area of or zone or reservoir subject to,
2 the oil and gas lease or right to develop to ac-
3 commodate coal development, or by suspension
4 of the Federal coal lease to accommodate gas or
5 oil development, in any portion of the common
6 area during the period prior to an order issued
7 pursuant to paragraph (10)(E) or paragraph
8 (11)(C).

9 “(ii) Notwithstanding the obligations of
10 Federal and State officials to maximize the eco-
11 nomic benefit to be received from mineral re-
12 sources, the public interest determination de-
13 scribed in clause (i) shall be made solely by the
14 calculation of the greater economic benefit to be
15 realized by comparison, on a net present value
16 basis, of the Federal and State revenues from
17 royalties and severance taxes likely to be gen-
18 erated from each mineral underlying the com-
19 mon area to which the petition for relief ap-
20 plies.

21 “(C)(i) If the determination made pursu-
22 ant to subparagraph (B) is that the public in-
23 terest is best realized by suspension of all or
24 part of the oil and gas lease or right to develop,
25 the court shall issue an order fixing the date

1 upon which the Federal coal lessee may com-
2 mence mining operations or construction of
3 support facilities in the common area.

4 “(ii) The date fixed by the court pursuant
5 to clause (i) may not be later than the com-
6 mencement date referred to in paragraph
7 (1)(A) and provided in the notice submitted
8 pursuant to paragraph (1)(C)(iii), except for
9 good cause shown.

10 “(D)(i) If the determination made pursu-
11 ant to subparagraph (B) is that the public in-
12 terest is best realized by requiring suspension of
13 the Federal coal lease, the court shall issue an
14 order prohibiting the mining operations from
15 intersecting, or the support facilities from being
16 constructed in, all or a portion of the common
17 area.

18 “(ii) The order issued pursuant to clause
19 (i) shall expire upon the issuance of an order
20 pursuant to paragraph (11)(C).

21 “(5) CONDITIONS IN WHICH COURT MAY RE-
22 FRAIN FROM ISSUING ORDER.—(A) The court may
23 receive such briefs or testimony, or both, as it deems
24 appropriate within 90 days of the filing of the peti-
25 tion for relief pursuant to paragraph(1)(A), but may

1 refrain from issuing the order required by paragraph
2 (4)(C) or paragraph (4)(D) only if the court deter-
3 mines, pursuant to paragraph (4)(A), that—

4 “(i) no common area exists; or

5 “(ii) the approved or proposed mining plan
6 does not provide for the mining operations to
7 intersect, or the support facilities to be con-
8 structed in, the common area.

9 “(B) If the court makes either determination
10 described in subparagraph (A), the court shall issue
11 an order terminating the proceeding under this sub-
12 section.

13 “(6) VALUATION PROCEDURE: APPOINTMENT
14 OF EXPERTS.—(A) Within 30 days of the issuance
15 of an order pursuant to paragraph (4)(C) or para-
16 graph (4)(D), to assist the court in making the de-
17 terminations pursuant to paragraph (10) or para-
18 graph (11), the Federal coal lessee and the oil and
19 gas developer shall each appoint a person who is an
20 expert in appraising the value of, and right to de-
21 velop, gas or oil if the order is issued under para-
22 graph (4)(C), or coal if the order is issued under
23 paragraph (4)(D), and these persons shall agree
24 upon and appoint a third person with such expertise.

1 If no agreement is reached on the appointment of a
2 third person, the court shall make the appointment.

3 “(B) The Federal coal lessee shall be respon-
4 sible for compensation of the expert appointed by it;
5 the oil and gas developer shall be responsible for
6 compensation of the expert appointed by it; and the
7 Federal coal lessee and oil and gas developer shall
8 each pay one-half of the compensation for the third
9 expert.

10 “(7) INFORMATION AND DATA.—(A) The Fed-
11 eral coal lessee, oil and gas developer, and Secretary
12 of the Interior shall each submit to the panel of ex-
13 perts within 30 days of the appointment of the panel
14 pursuant to paragraph (6) all information and data
15 in the possession of such party that is pertinent to
16 the determinations to be made pursuant to para-
17 graph (10) or paragraph (11), and shall each submit
18 to the panel of experts thereafter any additional per-
19 tinent information and data in the possession of
20 such party that the panel requests of such party in
21 writing.

22 “(B) Except as provided in subparagraph (C),
23 the court shall ensure that any information and data
24 submitted to the panel of experts pursuant to sub-
25 paragraph (A) shall provide the protection of con-

1 confidentiality that is applicable, and may be accorded,
2 to them by law and the Federal rules of civil proce-
3 dure and evidence.

4 “(C) All information and data submitted to the
5 panel of experts pursuant to subparagraph (A) shall
6 be available for review by all parties unless an ex
7 parte order is issued by the court.

8 “(D) The Federal coal lessee may drill for and
9 otherwise collect data or information on coalbed
10 methane at any site or sites within the common area
11 that are not within a spacing unit containing a well
12 that is producing or capable of producing coalbed
13 methane. The drilling or collection of data or infor-
14 mation shall be for the sole purpose of submission
15 of information and data pursuant to this paragraph.
16 The Federal coal lessee shall not produce any coal-
17 bed methane as a result of any drilling authorized
18 by this subparagraph and shall comply with any
19 Federal or State requirements applicable to such ac-
20 tivity.

21 “(8) SUBMISSION OF BRIEFS AND HEARING.—
22 (A) Within 45 days of the appointment of the panel
23 of experts pursuant to paragraph (6), all parties
24 may submit briefs concerning the determinations to

1 be made pursuant to paragraph (10) or paragraph
2 (11).

3 “(B) Within 60 days of the appointment of the
4 panel of experts pursuant to paragraph (6), the
5 panel may, or if requested by the petitioner or a re-
6 spondent shall, receive testimony from all parties
7 concerning the determinations to be made pursuant
8 to paragraph (10) or paragraph (11).

9 “(9) EXPERTS’ REPORT.—Within 120 days of
10 the appointment of the panel of experts pursuant to
11 paragraph (6), the panel shall submit a written re-
12 port to the court providing in detail the panel’s rec-
13 ommendations on the determinations to be made
14 pursuant to paragraph (10) or paragraph (11).

15 “(10) COURT’S FINAL RESPONSE TO PETITION:
16 VALUATION CONCERNING ECONOMICALLY RECOVER-
17 ABLE OIL OR GAS RESOURCES LOST OR DELAYED,
18 SUSPENSION OR TERMINATION, AND PAYMENT
19 ORDER.—Within 210 days of the issuance of an
20 order pursuant to paragraph (4)(C), the court shall
21 take the following actions:

22 “(A)(i) The court shall determine whether,
23 as a result of the order issued pursuant to
24 paragraph (4)(C), all or any part of, including
25 any geographical area of or zone or reservoir

1 subject to, the oil and gas lease or right to de-
2 velop should be suspended during the period in
3 which the mining operations or support facili-
4 ties occupy the common area or whether the oil
5 and gas lease or right to develop should be ter-
6 minated.

7 “(ii) Any determination to suspend pursu-
8 ant to clause (i) shall, wherever possible or ap-
9 propriate, limit the suspension or phase the sus-
10 pension to permit the optimum development of
11 the oil or gas prior to the time at which the
12 mining operations would reach the area within
13 the common area that is subject to the suspen-
14 sion or particular phase of the suspension.

15 “(iii) Any determination to terminate pur-
16 suant to clause (i) shall be made only if the
17 court finds that the economically recoverable oil
18 and gas resources subject to compensation pur-
19 suant to subparagraph (E) would be entirely
20 lost or rendered impracticable to produce as a
21 consequence of the mining operations in the
22 common area and that such resources con-
23 stitute all of the economically recoverable re-
24 sources within the oil and gas property.

1 “(B) If the court makes a determination to sus-
2 pend pursuant to subparagraph (A), the court shall
3 determine—

4 “(i) the amount of any net income that will
5 not be realized due to delay in development of
6 economically recoverable resources of oil or gas,
7 other than coalbed methane, from the common
8 area, whether or not such development has
9 commenced;

10 “(ii) the amount of any net income that
11 will not be realized due to—

12 “(I) delay in development of economi-
13 cally recoverable resources of coalbed
14 methane in the common area, whether or
15 not development has commenced;

16 “(II) the loss of any economically re-
17 coverable resources of coalbed methane
18 from the coal to be extracted by the min-
19 ing operations in the common area; and

20 “(III) the loss of any economically re-
21 coverable resources of coalbed methane un-
22 derlying any area that is within the oil and
23 gas property associated with the common
24 area and that extends outward from each
25 exposed coal face of the mining operations

1 for a distance from which drainage of such
2 resources is established to the satisfaction
3 of the court; and

4 “(iii) any of the following damages that
5 will be incurred by the oil and gas developer as
6 a consequence of the suspension: any unavoi-
7 dable fixed expenses (including, but not limited
8 to, the expenses of shutting in production,
9 maintenance, testing, redrilling or reconnecting
10 an existing well, relaying pipeline, and all other
11 expenses reasonably related to reestablishing
12 any existing oil or gas production); expenses as-
13 sociated with stranded costs of drilling equip-
14 ment and facilities; any royalties on oil or gas
15 not produced; and any lost income associated
16 with temporarily shutting in production from
17 wells outside of the common area as needed for
18 reconnection to a gathering system or pipeline
19 to market.

20 “(C) The determinations made pursuant to
21 subparagraph (B) shall not reflect any decrease
22 in value that occurred before the date of the de-
23 terminations and is caused by the mining oper-
24 ations or support facilities.

1 “(D) If the court makes a determination to
2 terminate pursuant to subparagraph (A), the
3 court shall determine the amount of any net in-
4 come that will not be realized and any damages
5 due to the loss of, or impracticability to
6 produce, the economically recoverable resources
7 of oil or gas in the oil and gas property in the
8 same manner as provided in subparagraph (B).

9 “(E) The court shall issue an order that—

10 “(i) suspends all or part of, suspends
11 in phases parts of, or terminates the oil
12 and gas lease or right to develop, including
13 any applicable payment or production obli-
14 gations; and

15 “(ii) awards to the oil and gas devel-
16 oper and all other owners of any interest
17 in the oil and gas property, as their inter-
18 ests may appear, a sum of money from the
19 Federal coal lessee equal to the net income
20 amount and damages determined pursuant
21 to subparagraph (B) or subparagraph (D).

22 “(F) In determining the amount of net in-
23 come that will not be realized pursuant to sub-
24 paragraph (B) or subparagraph (D) and the
25 sum of money to be awarded pursuant to sub-

1 paragraph (E), the court shall ensure to the
2 best of its ability that the Federal coal lessee is
3 not required to pay for the same gas lost, de-
4 layed in development, or rendered impracticable
5 to develop to more than one oil and gas devel-
6 oper or the owner of any interest in more than
7 one oil and gas property.

8 “(11) COURT’S FINAL RESPONSE TO PETITION:
9 VALUATION CONCERNING ECONOMICALLY RECOVER-
10 ABLE COAL RESERVES LOST OR DELAYED, SUSPEN-
11 SION OR TERMINATION AND PAYMENT ORDER.—
12 Within 210 days of the issuance of an order pursu-
13 ant to paragraph (4)(D), the court—

14 “(A) shall determine whether the Federal
15 coal lease shall be suspended in whole or in part
16 to accommodate oil or gas development in the
17 common area; and

18 “(B) shall determine the amount of any
19 net income that will not be realized from the
20 loss or delay in development of economically re-
21 coverable resources of coal, and the unavoidable
22 fixed expenses (including, but not limited to,
23 additional expenses associated with reclamation,
24 expenses associated with stranded costs of min-
25 ing equipment and facilities, a proportionate re-

1 fund of the lease bonus, and any royalties on
2 coal not produced) that will be incurred, by the
3 Federal coal lessee as a consequence of the sus-
4 pension; and

5 “(C) shall issue an order that—

6 “(i) suspends in whole or in part the
7 Federal coal lease, including any applicable
8 payment or production obligations on the
9 lease or logical mining unit, for the period
10 necessary for expeditious development in
11 the common area of the gas or oil that is
12 the subject of the petition for relief as
13 demonstrated to the court in a production
14 plan submitted by the oil and gas devel-
15 oper; and

16 “(ii) awards to the Federal coal lessee
17 and all other owners of any interest in the
18 Federal coal lease or logical mining unit,
19 as their interests may appear, a sum of
20 money equal to the net income amount and
21 unavoidable fixed expenses determined pur-
22 suant to subparagraph (B).

23 “(12) REVIEW OF EXPERTS’ REPORT.—(A) The
24 court shall make the determinations required by
25 paragraph (10) or paragraph (11) after reviewing

1 the report of the panel of experts submitted pursu-
2 ant to paragraph (9) and the hearing required by
3 subparagraph (B).

4 “(B) After submission of the report of the
5 panel of experts pursuant to paragraph (9) and
6 prior to making the determinations required by
7 paragraph (10) or paragraph (11), the court shall
8 hold a hearing in which the panel of experts shall
9 present their report and the parties to the pro-
10 ceeding shall have the opportunity to examine the
11 panel and provide to the court any evidence or argu-
12 ments they may have to support or contravene the
13 recommendations of the report.

14 “(13) DISBURSEMENT OF PAYMENTS.—

15 “(A)(i) At the election of the oil and gas
16 developer, the sum of money awarded by the
17 court pursuant to paragraph (10)(E) shall be—

18 “(I) paid in full within 60 days of the
19 date of issuance of the order pursuant to
20 paragraph (10)(E); or

21 “(II) divided into the number of tons
22 of recoverable coal in the common area and
23 shall be paid in per ton increments as the
24 coal is mined in accordance with clause (ii)
25 and subparagraph (C).

1 “(ii) The Federal coal lessee shall make
2 the payments required by clause (i)(II) on a
3 quarterly basis in advance based on the Federal
4 coal lessee’s estimate of the number of tons of
5 coal to be mined in the common area during the
6 following quarter, and shall add or subtract an
7 amount to or from the advance payment for the
8 next quarter to reflect the coal actually sold or
9 transferred.

10 “(B)(i) At the election of the Federal coal
11 lessee, the sum of money awarded by the court
12 pursuant to paragraph (11)(C) shall be—

13 “(I) paid in full within 60 days of the
14 date of issuance of the order pursuant to
15 paragraph (11)(C); or

16 “(II) divided into the number of bar-
17 rels of recoverable oil or cubic feet of re-
18 coverable gas in the common area and paid
19 in per barrel or cubic feet increments as
20 the oil or gas is produced in accordance
21 with clause (ii) and subparagraph (C).

22 “(ii) The oil and gas developer shall make
23 the payments required by clause (i)(II) on a
24 quarterly basis in advance based on the oil and
25 gas developer’s estimate of the number of bar-

1 rels of oil or cubic feet of gas to be produced
2 in the common area during the following quar-
3 ter, and shall add or subtract an amount to or
4 from the advance payment for the next quarter
5 to reflect the oil or gas actually produced.

6 “(C) If the mining or production necessary
7 to make full payment of the sum of money
8 awarded by the court in accordance with sub-
9 paragraph (A)(i)(II) or subparagraph (B)(i)(II)
10 does not occur within 5 years of the date of
11 issuance of the court order pursuant to para-
12 graph (10)(E) or paragraph (11)(C), the un-
13 paid balance shall be paid within 60 days there-
14 after.

15 “(14) TERMINATION OF OIL AND GAS LEASE
16 SUSPENSION.—(A) If the court issues an order to
17 suspend all or any part of the oil and gas lease or
18 right to develop pursuant to paragraph (10)(E)—

19 “(i) the Federal coal lessee shall notify the
20 court and the oil and gas lessee developer when
21 the portion of the common area subject to the
22 order issued pursuant to paragraph (10)(E) is
23 no longer required for mining operations or
24 support facilities; and

1 “(ii) within 120 days of the date of receipt
2 by the court of the notification pursuant to
3 clause (i) or within 60 days prior to the date
4 on which the period established by the court in
5 the order issued pursuant to paragraph (10)(E)
6 concludes, the oil and gas lessee may petition
7 the court for an order that terminates the sus-
8 pension and fixes the date and terms on which
9 the oil and gas lessee may resume operations
10 within the portion of the common area subject
11 to the order issued pursuant to paragraph
12 (10)(E).

13 “(B) The court shall issue the order sought
14 under subparagraph (A)(ii) within 30 days of receipt
15 of the petition pursuant to subparagraph (A)(ii).

16 “(C)(i) If the oil and gas developer determines
17 that, as a consequence of the order of the court
18 issued pursuant to paragraph (4)(C) and an order to
19 suspend all or portions of the oil and gas lease or
20 right to develop pursuant to paragraph (10)(E), the
21 conditions described in paragraph (10)(A)(iii) exist,
22 the oil and gas developer may petition the court to
23 terminate in whole or in part the oil and gas lease
24 or right to develop.

1 “(ii) The petition referred to in clause (i) may
2 be filed any time after issuance of the order of the
3 court pursuant to paragraph (10)(E) but not later
4 than 120 days after the date of receipt by the court
5 of the notification pursuant to subparagraph (A)(i).

6 “(iii) Upon receipt of a petition pursuant to
7 clause (i), the court shall make a determination
8 whether to issue an order to terminate in whole or
9 in part the oil and gas lease or right to develop and
10 award an additional amount from the Federal coal
11 lessee to the oil or gas developer and all other own-
12 ers of any non-Federal interest in the oil and gas
13 property, as their interests may appear, in accord-
14 ance with the procedures and deadlines established
15 in paragraph (1) and paragraphs (6) through (13).

16 “(15) TERMINATION OF COAL LEASE SUSPEN-
17 SION.—(A) If the court issues an order requiring
18 suspension of the Federal coal lease pursuant to
19 paragraph (11)(C)—

20 “(i) the oil and gas developer shall notify
21 the court and the Federal coal lessee when the
22 portion of the common area subject to the order
23 issued pursuant to paragraph (11)(C) is no
24 longer required for gas or oil production from
25 such portion; and

1 “(ii) within 120 days of the receipt by the
2 court of the notification pursuant to clause (i)
3 or within 60 days prior to the date on which
4 the period established by the court in the order
5 issued pursuant to paragraph (11)(C) con-
6 cludes, the Federal coal lessee may petition the
7 court for an order that fixes the date and terms
8 on which the Federal coal lessee may commence
9 mining operations or construction of support fa-
10 cilities in the portion of the common area sub-
11 ject to the order issued pursuant to paragraph
12 (11)(C) and, if the Federal coal lease is sus-
13 pended, terminates the suspension.

14 “(B) The court shall issue the order sought
15 under subparagraph (A)(ii) within 30 days of receipt
16 of the petition pursuant to subparagraph (A)(ii).

17 “(C)(i) If the Federal coal lessee determines
18 that, as a consequence of the orders of the court
19 issued pursuant to paragraph (4)(D) and paragraph
20 (11)(C), further development of all or any part of
21 the Federal coal lease is impracticable, the Federal
22 coal lessee may petition the court to terminate all or
23 any part of the Federal coal lease.

24 “(ii) The petition referred to in clause (i) may
25 be filed any time after issuance of the order of the

1 court pursuant to paragraph (11)(C) but not later
2 than 120 days after the date of receipt by the court
3 of the notification pursuant to subparagraph (A)(i).

4 “(iii) Upon receipt of a petition pursuant to
5 clause (i), the court shall make a determination
6 whether to issue an order to terminate all or any
7 part of the Federal coal lease and award an addi-
8 tional amount from the oil and gas developer to the
9 Federal coal lessee and all other owners of any inter-
10 est in the Federal coal lease or logical mining unit,
11 as their interests may appear, in accordance with
12 the procedures and deadlines established in para-
13 graph (1) and paragraphs (6) through (13).

14 “(16) SUPPLEMENTAL PETITION FOR RE-
15 LIEF.—(A) If, at any time after the issuance of an
16 order pursuant to paragraph (10)(E) or paragraph
17 (11)(C), the mining plan that is the basis of the
18 order is altered in a manner that may warrant sus-
19 pension of an additional part or all of, or termi-
20 nation of, the oil and gas lease or right to develop
21 or suspension of an additional part of the Federal
22 coal lease or an increase in the sum of money that
23 was awarded under the order, or both, either the
24 Federal coal lessee or the oil and gas developer may,
25 if necessary after compliance with the requirements

1 of subsection (e), file a supplemental petition for re-
2 lief with the court to amend the order.

3 “(B) The requirements of paragraph (1) and
4 paragraphs (6) through (13) shall apply to the sup-
5 plemental petition submitted pursuant to subpara-
6 graph (A).

7 “(C)(i) Upon completion of the process required
8 by subparagraph (B), the court shall make a deter-
9 mination whether to suspend an additional part or
10 all of, or terminate, the oil and gas lease or right to
11 develop or to suspend an additional part of the Fed-
12 eral coal lease as described in, and to award an ad-
13 ditional sum of money calculated in accordance with,
14 paragraph (10) or paragraph (11).

15 “(ii) The court shall issue any order resulting
16 from the determinations made pursuant to clause (i)
17 within 90 days of the date of filing of the supple-
18 mental petition for relief.

19 “(iii) Any award of an additional sum of money
20 shall be paid in accordance with paragraph (13).

21 “(17) APPEAL OF COURT ORDERS.—(A) Any
22 order issued pursuant to paragraph (4)(C), para-
23 graph (4)(D), paragraph (5)(B), paragraph (14)(B),
24 or paragraph (15)(B) is final and may not be ap-
25 pealed.

1 “(B) Any order issued pursuant to paragraph
2 (10)(E), paragraph (11)(C), paragraph (14)(C)(iii),
3 paragraph (15)(C)(iii), or paragraph (16)(C)(ii) may
4 be appealed, but the appeal, and any disposition
5 thereof, may not disturb any order referred to in
6 subparagraph (A).

7 “(g) LIABILITY LIMITATION.—

8 “(1) FEDERAL COAL LESSEE.—Except as pro-
9 vided in a written agreement reached pursuant to
10 subsection (e)(2) or reached on or after September
11 1, 1999, and before the date of enactment of this
12 section, or as provided by an order of the court pur-
13 suant to subsection (f), the holder of a Federal coal
14 lease subject to the agreement or order shall not be
15 liable to the oil and gas developer of, or any owner
16 of an interest in, any oil and gas property subject
17 to the agreement or order for any decrease in or de-
18 pletion of, or any impairment of the ability to re-
19 cover, any gas or oil from the property that may re-
20 sult from the development of any coal on the Fed-
21 eral coal leasehold or within a logical mining unit
22 with the Federal coal lease.

23 “(2) OIL AND GAS DEVELOPER.—Except as
24 provided in a written agreement reached pursuant to
25 subsection (e)(2) or reached on or after September

1 1, 1999, and before the date of enactment of this
2 section, or as provided by an order of the court pur-
3 suant to subsection (f), the oil and gas developer of
4 an oil and gas property subject to the agreement or
5 order shall not be liable to a holder of a Federal coal
6 lease subject to the agreement or order, the United
7 States, or any owner of an interest in private or
8 State coal within a logical mining unit with the Fed-
9 eral coal lease, for any impairment of the ability to
10 recover coal from the Federal coal leasehold or log-
11 ical mining unit that may result from the develop-
12 ment of gas or oil on the property.

13 “(h) CREDIT AGAINST ROYALTIES.—

14 “(1) IN GENERAL.—(A) Whenever a holder of
15 a coal lease issued under this Act is required by a
16 written agreement reached pursuant to subsection
17 (e)(2) and ratified by the Bureau of Land Manage-
18 ment or reached prior to the date of enactment of
19 this section and ratified by the Bureau of Land
20 Management on or after September 1, 1999, or by
21 a court order issued pursuant to paragraph (10)(E),
22 paragraph (14)(C)(iii), or paragraph (16)(C)(ii) of
23 subsection (f), to pay an amount for termination or
24 suspension of all or part of, or termination, of an oil
25 and gas lease of, or right to develop, coalbed meth-

1 ane on any oil and gas property located within the
2 Subsection (h) Lands, the amount so paid shall be
3 credited against any royalties on production required
4 by section 7(a) or any other provision of this Act
5 from any Federal coal lease of such holder or any
6 affiliate thereof.

7 “(B) Whenever a holder of an oil and gas lease
8 issued under this Act is required by a written agree-
9 ment reached pursuant to subsection (c)(2) and rati-
10 fied by the Bureau of Land Management or reached
11 prior to the date of enactment of this section and
12 ratified by the Bureau of Land Management on or
13 after September 1, 1999, or by a court order issued
14 pursuant to paragraph (11)(C), paragraph
15 (15)(C)(iii), or paragraph (16)(C)(ii) of subsection
16 (f), to pay an amount for suspension or termination
17 of all or part of a Federal coal lease located within
18 the Subsection (h) Lands, the amount so paid shall
19 be credited against any royalties on production re-
20 quired by subsection (b)(1)(A) or subsection (c)(1)
21 of section 17 or any other provision of this Act from
22 any Federal oil and gas lease of such holder or any
23 affiliate thereof.

24 “(2) TREATMENT OF ROYALTIES TO STATES.—

25 The Secretary shall pay to the State in which the

1 coal lease or oil and gas lease referred to in para-
 2 graph (1)(A) or paragraph (1)(B), respectively, is lo-
 3 cated 50 percent of the amount of any credit against
 4 royalties provided under paragraph (1)(A) or para-
 5 graph (1)(B), respectively—

6 “(A) in the same manner as if the credit
 7 against royalties had been paid in money as
 8 royalties and distributed under section 35(a);
 9 and

10 “(B) from amounts received as royalties,
 11 rentals, or bonuses derived from leases issued
 12 under this Act that otherwise would be depos-
 13 ited to miscellaneous receipts under section
 14 35(a).

15 “(i) DENIAL OF USE AS PRECEDENT.—Nothing in
 16 this section shall be applicable to any lease under this Act
 17 for any mineral, or shall be applicable to, or supersede
 18 any statutory or common law otherwise applicable in, any
 19 proceeding in any Federal or State court involving devel-
 20 opment of any mineral, outside of any common area, as
 21 defined in subsection (a)(6), within the Powder River
 22 Basin, as defined in subsection (a)(1).”.

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